

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

CLERK'S OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED

APR 29 2009

JOHN F. CORCORAN, CLERK
BY:  DEPUTY CLERK

CHARLES EDWARD WERNERT, II,

Plaintiff,

vs.

**RYANT L. WASHINGTON, Sheriff,
sued in his official capacity,**

and

**JOSHUA GREEN, Deputy Sheriff sued
in his individual capacity**

Defendants.

COMPLAINT

Civil Action No. 3:09cv 00031

PRELIMINARY STATEMENT

1. This is an action brought by a man who, while in the custody of a law enforcement officer, had his rights under the Eighth and Fourteenth Amendments to the United States Constitution violated when, while handcuffed, he was, without justification, thrown face first onto the concrete floor by a law enforcement officer.

JURISDICTION

2. The jurisdiction of this Court is predicated on 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3) and (4) against Defendant Green and on 28 U.S.C. § 1332 against Defendant Washington.

3. The plaintiff further invokes this Court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367 over any and all state claims that are so related to the claims in this action

within the original jurisdiction of this Court that they form part of the same case or controversy.

PARTIES

4. Plaintiff, Charles E. Wernert, is a citizen of the United States and a resident of the State of Pennsylvania.

5. Defendant Joshua Green is and was at all times relevant to this action a deputy sheriff of the County of Fluvanna, VA, and acting under color of state law.

6. Defendant Ryant L. Washington is and was at all time relevant a constitutionally elected Sheriff of Fluvanna County, VA and the employer and supervisor of Deputy Joshua Green.

FACTS

7. On May 4, 2008, Charles Wernert was in the custody of the Fluvanna County Sheriff's Office.

8. Mr. Wernert, handcuffed behind his back, was placed in a holding cell by Defendant Green.

9. While in the holding cell, Defendant Green directed Mr. Wernert to remove his belt and "kick" off his shoes.

10. Mr. Wernert did as directed by Defendant Green by placing his left foot toe to the heel of his right foot, thereby kicking off his shoe.

11. The shoe flew off Mr. Wernert's foot and lightly came into contact with the cheek of another deputy sheriff standing nearby.

12. Upon observing the glancing contact of the shoe on the other deputy, Defendant Green forcibly threw Mr. Wernert to the cement floor stating to him "don't be assaulting my deputies."

13. As a direct and proximate result of the aforesaid conduct of Defendant Green, Mr. Wernert suffered significant injuries to his teeth and jaw, including, but not limited to, a fracture of his jaw. Mr. Wernert also suffered significant pain, suffering and emotional distress; he also incurred sizeable medical bills and permanent injury.

14. Mr. Wernert was thereafter charged with felony assault and battery on the other deputy sheriff.

15. The felony assault and battery charge was dismissed.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Civil Rights Violation (Federal Claim - Defendant Green)

16. Mr. Wernert repeats and realleges paragraphs 1 through 15 of this Complaint as if fully set forth herein.

17. As a direct and proximate result of the actions of Defendant Green, in throwing Mr. Wernert to the floor, taken under color of law, Mr. Wernert was deprived of rights protected by the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

18. Mr. Wernert seeks compensation in the amount of THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$375,000.00) for the injuries he sustained and

because the conduct of Defendant Green was wilful, reckless, wanton and intentional, he seeks punitive damages in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

SECOND CAUSE OF ACTION

Assault and Battery (State Claim - Defendants Washington and Green)

19. Mr. Wernert repeats and realleges paragraphs 1 through 15 of this Complaint as if fully set forth herein.

20. The conduct of Defendant Green as set forth herein constitutes assault and battery in violation of the law of the Commonwealth of Virginia.

21. The assault and battery was the proximate cause of serious injuries sustained by Mr. Wernert entitling him to compensation in the amount of THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$375,000.00); because the conduct of Defendant Green was wilful, reckless, wanton and intentional, he seeks punitive damages against Defendant Green in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

22. As the constitutionally elected sheriff, Defendant Washington is also liable for said compensatory damages caused by Deputy Green.

THIRD CAUSE OF ACTION

Gross Negligence (State Claim - Defendants Washington and Green)

23. Mr. Wernert repeats and realleges paragraphs 1 through 15 of this Complaint as if fully set forth herein.

24. The conduct of Defendant Green as set forth herein constituted gross negligence;

said conduct causing serious injuries sustained by Mr. Wernert entitling him to compensation in the amount of THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$175,000.00); because the conduct of Defendant Green was wilful, reckless, wanton and intentional, he seeks punitive damages against Defendant Green, in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

25. As the constitutionally elected sheriff, Defendant Washington is also liable for said compensatory damages caused by Deputy Green.

REQUEST FOR RELIEF

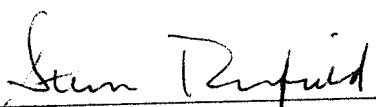
WHEREFORE, Mr. Wernert seeks against the defendants severally and jointly, where appropriate, the following relief:

- A. Compensatory damages in the amount of THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$375,000.00);
- B. Punitive damages against Defendant Green in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).;
- C. Reasonable attorneys fees and costs against Defendant Green pursuant to 42 U.S.C. § 1988; and,
- D. Such other and further relief as appears reasonable and just.

JURY TRIAL

Plaintiff, Charles Wernert, hereby demands trial by jury.

Respectfully submitted,
CHARLES E. WERNERT, II
By Counsel


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